Q. Where was he then?

A. He was up between the third floor and the attic level, working on this particular post.

Recross-examination by Mr. COOPER, for the defendant:

Q. What was it necessary for Mr. Berry to work with?

A. Well, to make a latching around that post it was necessary for him to possibly use a small wrench.

Q. What was his business there?

A. He was engaged there as a rigger.

Q. To move the pillars and post and scaffold?

A. Not so much the scaffolding, but looking after the derricks.

Mr. AKERMAN. I tender at this point the bolt identified by the witness Hunt. I tender also the diagram identified by the witness Blumberg, and the photographs marked "Exhibits A, B, C, D, and E."

Mr. COOPER. I object to the photographs and to the position of the man testified to by Mr. Blumberg, on the ground that it is
109 irrelevant and incompetent to illustrate the way that this killing occurred. I object to the diagram and everything on it—all these marks put there by Mr. Blumberg, I suppose.

Judge SPEER. Did Mr. Blumberg see the body after it fell?

Mr. AKERMAN. Yes, sir.

Judge SPEER. Did he testify to that?

Mr. AKERMAN. Yes, sir; he pointed out the spot. He stated that the body was in about the middle of this dotted square [indicating on the diagram].

Judge SPEER. The objection is overruled.

Mr. COOPER. I will note an exception, may it please your honor.

111 The foregoing amendment to the bill of exceptions in the foregoing case is hereby allowed, and is hereby certified as true and correct and ordered filed as part of the record of said cause, and the clerk of this court is hereby ordered and directed to make out a true and correct transcript of the same and certify the same to the Supreme Court of the United States, together with the other record in said cause.

This 3d day of August, 1907.

EMORY SPEER,
United States District Judge.

We hereby agree that the foregoing amendment is true and correct and that the same may be allowed by the Honorable Emory Speer, United States judge, and sent up to the Supreme Court of the United States with the record in said cause.

ALEXANDER AKERMAN,
Assistant United States Attorney.
JOHN RANDOLPH COOPER,
Attorney for Thomas Battle.

Filed August 5, 1907.

CECIL MORGAN, *Deputy Clerk.*

112 In the United States Circuit Court for the Western Division of the Southern District of Georgia.

I, Tomlinson F. Johnson, clerk of the United States Circuit Court for the Western Division of the Southern District of Georgia, do hereby certify that the writing annexed to this certificate is a true and correct transcript of the record, as directed by law to be made, and copies of such proofs and of such entries and papers of file as is necessary on the hearing of the appeal in the criminal case of the United States versus Thomas Battle, late pending in said Circuit Court of the United States for the Western Division of the Southern District of Georgia, and appealed by the defendant, Thomas Battle, to the United States Supreme Court, as the same remains of file and of record in my office.

Witness my official signature and the seal of the said court at Macon, Ga., this 7th day of August, A. D. 1907.

[SEAL.] TOMLINSON F. JOHNSON, *Clerk.*
By CECIL MORGAN, *Deputy Clerk.*

113 *Citation on writ of error.*

UNITED STATES OF AMERICA:

The President of the United States to the United States of America, greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at Washington, in the capital of the nation, on the 10th day of August, 1907, pursuant to writ of error filed in the clerk's office of the Circuit Court of the United States for the Western Division of the Southern District of Georgia, at Macon, in the Fifth Circuit, in a cause entitled United States by indictment versus Thomas Battle, wherein the said Thomas Battle, the plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the party in that behalf.

Witness, the Honorable Emory Speer, judge of the District Court of the United States for the Western Division of the Southern District of Georgia, holding said Circuit Court, this 11th day of July, in the year of our Lord one thousand nine hundred and seven.

EMORY SPEER,
United States District Judge, holding the Circuit Court.

114 Due and legal service of the within citation is hereby acknowledged and all other and further services waived.

This the 11th day of July, 1907.

MARION ERWIN,
United States Attorney for the Southern District of Georgia.
ALEXANDER AKERMAN,
Assistant U. S. Attorney, Southern District of Georgia.
R. E. STORRS,
Assistant U. S. Attorney, Southern District of Georgia.

On this the 17th day of July, 1907, personally appeared before me the subscriber, John Randolph Cooper, and makes oath that he delivered a true copy of the within citation to Marion Erwin, district attorney for Southern District of Georgia, and the attorneys of record, Messrs. Alexander Akerman & R. E. Storrs, assistants.

JOHN RANDOLPH COOPER,
Attorney for Plaintiff in Error.

Sworn to & subscribed before me this 17 July, 1907.
[SEAL.]
C. M. WILY,
Ordinary, Bibb County, Ga.

115 (Indorsed:) United States Circuit Court for the Western Division of the Southern District of Georgia. United States vs. Thomas Battle. Murder. Citation on writ of error. Filed July 19, 1907. Cecil Morgan, deputy clerk. John R. Cooper, counsel for Thomas Battle.

(Indorsement on cover:) File No., 20841. S. Georgia, C. C. U. S. Term No. 438. Thomas Battle, plaintiff in error, vs. The United States. Filed September 3d, 1907. File No. 20841.

O

Office Supreme Court, U. S.
FILED.
DEC 2 1907
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF UNITED STATES.

OCTOBER TERM, 1907.

UNITED STATES,
Defendant in Error.
vs.
THOMAS BATTLE,
Plaintiff in Error,

NUMBER 438.

WRIT OF ERROR FROM THE DISTRICT COURT OF UNITED STATES FOR THE WESTERN DIVISION OF THE SOUTHERN DISTRICT OF GEORGIA.

MOTION TO ADVANCE AND TO PROCEED IN FORMA PAUPERIS.

JOHN RANDOLPH COOPER,
Counsel for Plaintiff in Error.

POOR COPY

SUPREME COURT OF UNITED STATES.
OCTOBER TERM, 1907.

MOTION TO ADVANCE NUMBER 438.

THOMAS BATTLE,
Plaintiff in Error,
vs.
UNITED STATES,
Defendant in Error.

WRIT OF ERROR FROM THE DISTRICT COURT OF UNITED STATES FOR THE WESTERN DIVISION OF THE SOUTHERN DISTRICT OF GEORGIA.

STATEMENT AND REASONS FOR ADVANCEMENT OF THE CASE.

The plaintiff in error, Thomas Battle, was convicted of murder at the May special term of Court, 1907, in the Circuit Court of the United States for the Western Division of the Southern District of Georgia. He was sentenced to the penitentiary for life. He appealed his case at once to the Supreme Court of the United States by writ of error and the case was docketed in this Court to the October Term, 1907, number 438. The grounds relied on for invoking the jurisdiction of this Court was that the verdict of the jury in said case was contrary to law and evidence

and that the Court erred in charging the jury, and further, that the District Court had no jurisdiction to try said case, that the alleged crime was against the State of Georgia and not against the United States of America, and on several other grounds that are mentioned in the bill of exceptions.

It is respectfuily insisted that this cause should be advanced for the following reasons:

1. It is a capital case. The plaintiff in error, Thomas Battle, is a white man 73 years old and according to his sworn statement he is not guilty of any offense whatever. According to his statement the deceased Berry gave the first insult, struck the first blow and was the aggressor in the difficulty, and was making an assault upon him at the time he lost his life. The evidence of defendant's witnesses make it a clear case of justifiable homicide.

2. This case is a very important one and ought to be decided by this high tribunal at the earliest possible moment. If the defendant is guilty the Government is entitled to know it, and if the defendant is innocent he is entitled to his liberty.

3. The plaintiff in error Thomas Battle, is now working for the Government in the Federal Prison in Atlanta, Georgia, while his case is pending in the highest Court in the world. Judge Emory Speer, presiding Judge of said Southern District of Georgia, having declined to grant to him supersedeas while his case is pending in the Supreme Court.

4. The case being a capital one, the interests of public justice require a speedy trial. If this case is not decided right away the plaintiff in error, Thomas Battle, may not live to know his fate, as he is now a very old man, 73 years old. All of which is,

Respectfully submitted,

JOHN RANDOLPH COOPER,

Attorney for Thomas Battle,
Plaintiff in Error.

SUPREME COURT OF UNITED STATES.

OCTOBER TERM, 1907. NUMBER 438.

THOMAS BATTLE,
Plaintiff in Error,
vs.
UNITED STATES,
Defendant in Error.

WRIT OF ERROR FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DIVISION OF THE SOUTHERN DISTRICT OF GEORGIA.

NOTICE OF MOTION TO ADVANCE.

To L. M. Erwin and Alexander Akerman, District Attorneys for the United States, and attorneys of record in said case:

Take notice, that I shall move the Supreme Court of the United States, at the Court room of said Court in the Capitol of the Nation, in the City of Washington, D. C., on Monday, December 23d, 1907, at 11:00 o'clock in the forenoon, or as soon

thereafter as counsel can be heard, to advance the above entitled cause for argument, and that upon such motion I shall present to the Court in support thereof the statement and reasons hereto annexed. Respectfully,

JOHN RANDOLPH COOPER,
Attorney of Thomas Battle,
Plaintiff in Error.

Dated November 18, 1907. Macon, Georgia.

Due and legal service of the foregoing motion to advance said cause and notice to advance acknowledged and copy of said motion and notice received, and all other and further services waived.

MARION ERWIN,
ALEXANDER AKERMAN,
Attorneys for United States.

This November 18, 1907. Macon, Georgia.

NOTICE TO PROCEED IN FORMA PAUPERIS.

Now comes the plaintiff in error, Thomas Battle, in the foregoing stated case, through his counsel of record, and respectfully shows to this Honorable Court that upon his application through his counsel, a writ of error was allowed in said cause on the 10th day of July, 1907, by Judge Emory Speer, Judge of Circuit Court of the United States for the Western Division of the Southern District of Georgia, to be issued to the Supreme Court of the United States, to review a conviction of murder and a sentence to the penitentiary for life thereon, rendered against him in said Court, and that a citation was issued in due form returnable to the Supreme Court of the United States thirty days thereafter, to-wit, on the 10th day of August, 1907, that the record in said case has been transmitted and filed in the Supreme Court of the United States, together with the writ of error, the citation and assignment of errors, and that it is the intention of the plaintiff in error to prosecute said writ of error to effect, but that movant is a poor person and because of his poverty he is unable to pay the costs in the suit, and he believes that he is entitled to the redress he seeks therein, and he cannot secure the necessary costs from any source.

Wherefore movant prays that his case be docketed in this Court and that the record be printed, and that he have such other service and process in said Court, and that the officers of said Court may perform all such duties that may be necessary upon the case without the payment to them of any costs, and that he may be relieved by order of the Court from the payment of such costs as are assessed by the Clerk of the Court in the case.

JOHN RANDOLPH COOPER,

Counsel for Thomas Battle,
Plaintiff in Error.

UNITED STATES OF AMERICA.

STATE OF GEORGIA—FULTON COUNTY.

Thomas Battle vs. United States.

In person comes before the undersigned, an officer of said State and County, duly authorized by law to administer all oaths, Thomas Battle, personally known to me to be the person he represents himself to be, and upon his oath he says he is a poor person and because of his poverty he is unable to pay the costs in the above stated case. THOMAS BATTLE.

Sworn to and subscribed before me this 12th day of November, 1907.

[SEAL.] THOMAS ROGERS,
Notary Public.

UNITED STATES OF AMERICA.

STATE OF GEORGIA—BIBB COUNTY.

In person comes before the undersigned, an officer of said State and County, duly authorized by law to administer all oaths, John Randolph Cooper, who on his oath says, that he is counsel for the plaintiff in error, Thomas Battle, in the foregoing cause, and that of his own knowledge all the statements of fact in the foregoing motion are true.

JOHN RANDOLPH COOPER.

Sworn to and subscribed before me, this the 20th day of November, 1907.

[SEAL.] R. F. HUNTER,
N. P. Bibb Co. Ga.

FILED,
JAN 27 1908
JAMES H. McKENNEY,

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907

Number 438.

THOMAS BATTLE, Plaintiff in Error,

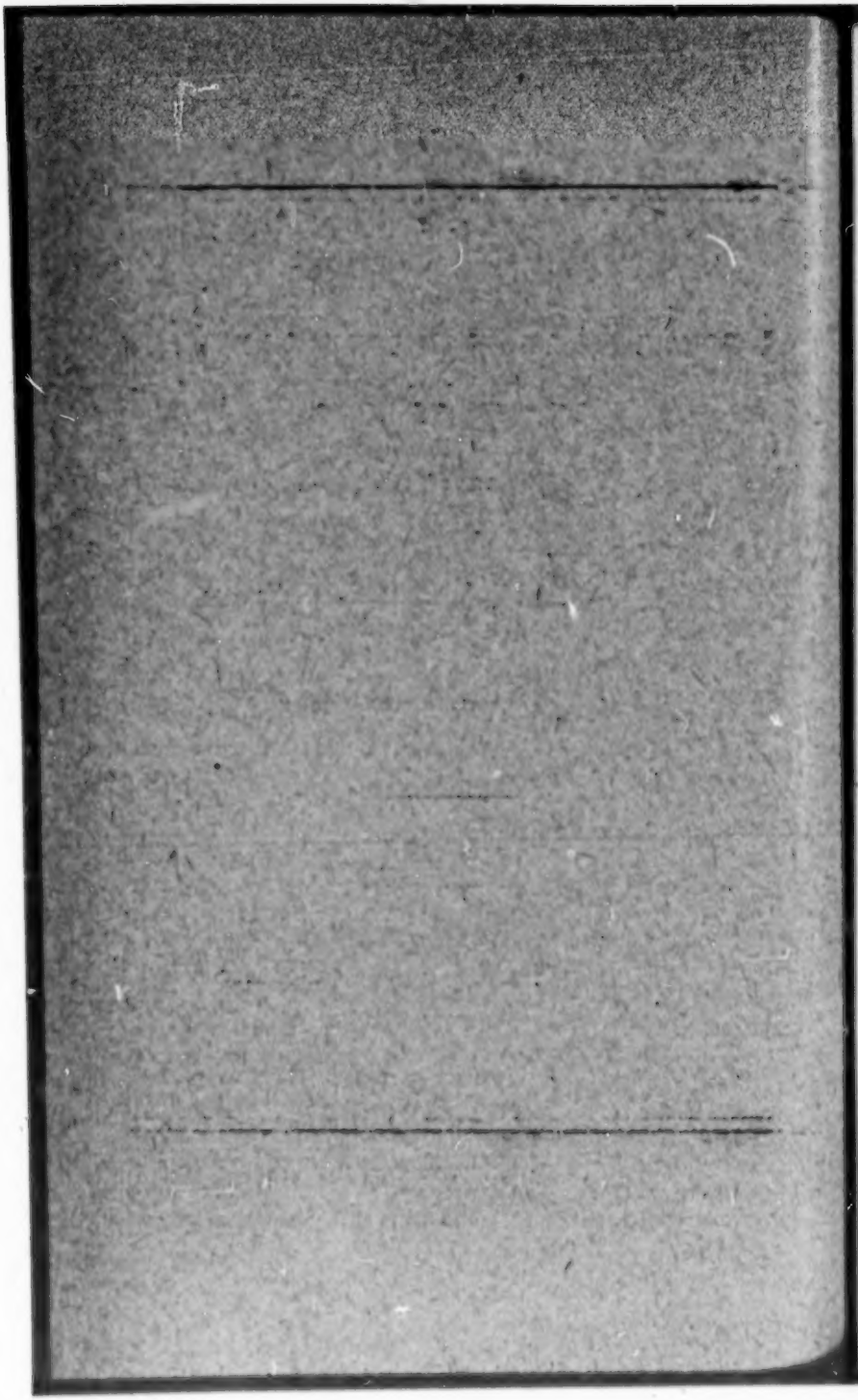
vs.

THE UNITED STATES.

BRIEF OF

JOHN RANDOLPH COOPER,

Counsel for Plaintiff in Error.



I.

JURISDICTION.

The Circuit Court had no jurisdiction to try Thomas Battle. The alleged offence in the bill of indictment was a crime against the State of Georgia and not against the United States. Congress has failed to describe and designate a Post-office site as a place within the exclusive jurisdiction of the United States. The federal statute making it a crime to commit murder within a fort, arsenal, dock yard, magazine, or in any other place or district of country, under the exclusive jurisdiction of the United States, has not designated a Post-office site as one of the places.

Bevans vs. the United States, 3d Wheaten, Page 336.

Tenn. vs. Davis, 100 U. S., page 279.

In re Neagle, 135 U. S., page 98.

Jones vs. The United States, 137 U. S., page 216.

"Mr. Justice Lamar says, in his descending opinion in the In Re Neagle case, 135 U. S. page 98, murder is not an offence against the United States except when committed on the high seas or in some port or harbor without the jurisdiction of the State, or in the District of Columbia or in the Territories, or at other places where the National Government has exclusive jurisdiction. It is well settled that such a crime must be defined by Statute. No such Statute has as yet been pointed out."

"Unquestionable jurisdiction to try and punish offenders against the authority of the United States is conferred upon the Circuit and District Courts; but the acts of Congress gives those Courts no jurisdiction whatever of offences committed against the authority of the State. Criminal homicide, committed in a State, is an offence against the authority of the State unless it is committed in a place within the exclusive jurisdiction of the United States. Congress has never defined such an offence when committed within the territorial limits of a State under the cir-

cumstances described in the transcript; nor is there any pretence for the suggestion either that the Circuit or District Courts have any jurisdiction of the case or that there is any conflict of jurisdiction between the judicial authorites of the State and those of the United States."

Tenn. vs. Davis, 100 U. S., page 281.

II.

The Court erred in not charging the jury in this case the law on self-defence. The prisoner did not get the benefit of his contention and his evidence before the jury. In a word, the Court ignored his defence altogether. The Defendant claimed that he struck Berry in defence of his own person and in order to save his own life.

Starr vs. The United States, 150 U. S., page 614.
Smith vs. The United States, 161 U. S., page 88.
Babe Beard vs. The United States, 158 U. S., page 550.
Allison vs. The United States, 160 U. S., page 203.

III.

The burden was upon the Government to show that the prisoner was sane; hence it was error to decline to charge the jury as requested by Defendant's counsel.

Davis vs. The United States, 160 U. S., page 469.

IV.

The Court erred in reflecting upon counsel for the prisoner while he was making his concluding argument to the jury. The language used by the Court was calculated, and probably did, prejudice the minds of the jury against the prisoner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907.

THOMAS BATTLE, *Plaintiff in Error,*
vs.
THE UNITED STATES.

NUMBER 438.

BRIEF OF JOHN RANDOLPH COOPER,

Counsel for Plaintiff in Error.

STATEMENT OF THE CASE

Thomas Battle, the Plaintiff in Error, was indicted in the Circuit Court of the United States for the Western Division of the Southern District of Georgia, for murder alleged to have been committed on the Post-office site at Macon, Georgia, on the 16th day of May, 1907, with the killing of one, Berry, within that District and within the exclusive jurisdiction of the United States.

Thomas Battle was convicted by the jury, of the offense of murder without capital punishment, and was sentenced to the penitentiary by Judge Emory Speer during the term of his natural life. Battle sued out this writ of error and assigned for error,

1. That the alleged crime was not committed within the jurisdiction of the United States.

2. That the alleged crime was within the jurisdiction of the State of Georgia, and was not within the exclusive jurisdiction of the United States.

3. That the Court committed error in overruling the demurrer filed by Defendant's counsel.

4. The Court erred in holding that the alleged crime was against the United States and was within the jurisdiction of said Court.

5. The Court erred in charging the jury in several instances.

6. The Court erred in reflecting upon the counsel for the prisoner.

7. That the Court erred in declining to charge the jury on the law of self-defence, as the Defendant contended on his trial that he killed Berry in defence of his own self and in order to save his own life.

8. The Court erred in not directing a verdict of not guilty on motion of the Defendant's counsel at the close of the evidence.

9. The Court erred in overruling the motion in arrest of judgment.

10. The Court erred in overruling the motion for a new trial.

11. The Court erred in declining to charge the jury as requested by Defendant's counsel.

12. The Court erred in not charging the jury on the law of involuntary manslaughter.

Potter vs. The State, 117 Georgia, page 693.

Jaques vs. The State, 111 Georgia, page 832.

Cunningham vs. Peoples, 13 Volume of Am. Cr. Rep., page 653, also reported 195 Ill., 550.

Peoples vs. O'Hara, 13 Volume of Am. Cr. Rep., page 576, also reported in 124 Mich. 515.

Wilson vs. Territory, 12 Volume of Am. Cr. Rep., page 582, also reported in 9th Okl., page 331.

State vs. Taylor, 12 Volume of Am. Cr. Rep., page 598, also reported in 7th Idaho, 134.

V.

The Court erred in declining to charge the jury in this case, as requested by Defendant's counsel, on the law of involuntary manslaughter. The Defendant contended in his statement to the jury that he did not intend to kill Berry, but tried to catch him as he fell from the scaffold to the ground.

Allison vs. The United States, 160 U. S., page 203.

Respectfully submitted,

JOHN RANDOLPH COOPER,
Counsel for Thomas Battle,
Plaintiff in Error.

Office Supreme Court, U. S.
FILED
JAN 27 1908
JAMES H. MCKENNEY
Clerk

No. 493.

In the Supreme Court of the United States.

OCTOBER TERM, 1907.

THOMAS BATTLE, PLAINTIFF IN ERROR,

v.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1907.

THOMAS BATTLE, PLAINTIFF IN ERROR,
v.
THE UNITED STATES.
No. 438.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This case comes before the court on a writ of error to the Circuit Court of the United States for the Southern District of Georgia.

The plaintiff in error, who was the defendant below, was indicted for the murder of one D. M. Berry on land the jurisdiction to which had been ceded to the United States and on which a public building was being erected at the time the crime was alleged to have been committed.

To this indictment the defendant entered a demurrer, the main ground of which was that the court was without jurisdiction to try the case. The demur-

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rer was overruled, and a plea of not guilty was entered by the prisoner. On trial the jury found the defendant guilty of murder, without capital punishment.

Motions in arrest of judgment and for a new trial were denied, and the defendant was sentenced to imprisonment for the term of his natural life in the United States penitentiary at Atlanta, Ga.

FACTS.

The occurrences which led to the indictment of the defendant took place on May 16, 1907, on a lot at the corner of Third and Mulberry streets, in the city of Macon, Ga. Title to this lot was conveyed to the United States by deed dated August 14, 1885. The description in the deed is the same as in the act of the Georgia legislature (Laws of Georgia, 1884–1885, p. 119), quoted within, ceding jurisdiction over this land.

The deceased, Berry, was working on a 10-inch plank below the top floor of the Government building located on these premises, and some 59 feet above the ground. It appears that a half or three-quarters of an hour before the killing took place there had been a dispute between the deceased and the defendant, and the latter was directed by a third party to go downstairs, but later came up again and attempted to take a shovel out of the hands of one Tom James, a laborer, who was working near the plank on which Berry was suspended. Failing to get the shovel, he took a hoe and prodded Berry with it several times.

Berry thereupon dodged around behind a post and got onto his hands and knees on a scaffold above where he was working. Battle then hit him either twice or three times on the head with a 20-inch iron bolt. After the first blow Berry fell on his hands and knees as though dazed. When he tried to get up, Battle hit him a second time, and either as a result of this blow or a subsequent one he fell from the scaffold to the ground, breaking his neck. Both the scaffold on which the blow was struck and the point to which Berry fell were within the lot ceded to the United States by act of the Georgia legislature. Whether death was due to the blow from the bolt or to the fall is uncertain. The doctor who examined the body shortly after the occurrence testified that the blows were probably sufficient to have caused death.

One R. W. Cheney, a witness for the defendant, gave testimony to the effect that Berry was the aggressor, but his story was inconsistent in several important points with that told by the defendant himself, and the overwhelming weight of evidence is to the contrary effect.

In any event, there is absolutely nothing in the record to indicate that the defendant, Battle, was in any danger of serious bodily harm from the deceased. The case went to the jury and, as hereinbefore stated, a verdict of guilty without capital punishment was found, and the defendant brought the case to this court upon a writ of error.

CONSTITUTIONAL PROVISION.

The Constitution provides (Article I, section 8, clause 17):

> The Congress shall have Power to exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority *over all Places* purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and *other needful Buildings*.

THE STATUTES.

> The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned, shall be exclusive of the courts of the several States:
>
> First. Of all crimes and offenses cognizable under the authority of the United States. (Sec. 711, R. S.)
>
> Every person who commits murder—
>
> First. Within any fort, arsenal, dockyard, magazine, or in any other place or district of country under the exclusive jurisdiction of the United States * * * shall suffer death. (Sec. 5339, R. S.)

This was amended by the act of January 15, 1897, by providing that the jury may qualify the verdict by adding "without capital punishment." (29 Stat. 487.)

The act of the Georgia legislature, ceding jurisdiction, reads as follows:

JURISDICTION OVER CERTAIN LAND IN MACON CEDED TO UNITED STATES.

No. 119.

AN ACT To provide for the ceding of jurisdiction to the United States to and over a certain lot of land in the city of Macon, Bibb County, of said State, when the United States Government shall acquire title thereto for the purpose of erecting a public building thereon.

Whereas, a bill has passed the Congress of the United States providing for the erection of a public building in the city of Macon, county of Bibb, said State, to be used for a post-office, court-house, and other public purposes; and

Whereas, the Congress of the United States has appropriated one hundred and twenty-five thousand dollars for such purposes; and

Whereas, it is necessary and proper that this State should cede to the Government of the United States jurisdiction over such land as may be acquired for the purposes mentioned therefor; and

Whereas, a certain lot of land, situated in the city of Macon, county of Bibb, said State, "to-wit:"

The northeast corner of Mulberry and Third streets, in said city of Macon, being parts of lots (3) three and (4) four, in block (18) eighteen, according to the plan of said city, fr[illegible]ing (140) one hundred and forty feet on Third

street, and one hundred and twenty feet on Mulberry street, has been selected as a site whereon to erect said public building:

SECTION I. *Be it enacted by the General Assembly of said State, and it is hereby enacted by the authority aforesaid, That the jurisdiction of this State is hereby ceded to the Government of the United States* to said lot of land in the county of Bibb, situated at the northeast corner of Mulberry and Third streets, being parts of lots four and (3) three, in block eighteen, according to the plan of said city, fronting 140 feet on Third and 120 feet on Mulberry streets, for the purposes mentioned in this preamble, so long as said land is used for said purposes.

SECTION II. *Be it further enacted*, That all conflicting laws with this act are repealed.

Approved August 19, 1885.

ARGUMENT.

The assignments of error, twenty-seven (27) in number, taken as a whole, raise the following questions, which will be dealt with in detail:

I.

The main ground upon which plaintiff in error relies is that the Circuit Court was without jurisdiction to try the offense. It can not be denied that the Congress in the performance of its constitutional powers may exercise exclusive legislation over places purchased with the consent of the legislature of the State in which such place may be situated for the erection of forts, arsenals, dockyards, and magazines. The lan-

guage of the Constitution and of the Revised Statutes makes such a claim untenable, even were the question a new one. The courts have, however, repeatedly held that, in the language of Justice Field in Railroad Company v. Lowe (114 U. S., 532), "When the title is acquired by purchase by consent of the Legislatures of the States, the Federal jurisdiction is exclusive of all State authority," etc. This doctrine has been followed in a number of cases.

Benson v. *United States*, 146 U. S., 325.
United States v. *Cornell*, Fed. Cas., 14867
United States v. *Davis*, Fed. Cas., 14930.
United States v. *Meagher*, 37 Fed. Rep., 875.
Commonwealth v. *Clary*, 8 Mass., 72.

In *Sinks* v. *Reese* (19 Ohio St., 306), the Supreme Court of Ohio went further and held that asylums for disabled soldiers are "needful buildings" for the erection of which the Government may purchase and hold land and that the cession of such land by the State government gave the United States exclusive jurisdiction.

Nowhere, either in the works of writers on the Constitution or in the decisions of adjudicated cases, has there been any intimation that the constitutional power of Congress to exercise exclusive jurisdiction over land ceded by a State was limited to cases where the cession was for the purpose of erecting a fort, arsenal, dockyard or magazine. On the contrary, the language of both text-books and courts has indicated that the words "needful buildings" were to be literally construed.

In *United States* v. *Bevans* (3 Wheat., 390), Chief Justice Marshall said:

> The objects with which the word "place" is associated, are all, in their nature, fixed and territorial. A fort, an arsenal, a dockyard, a magazine, are all of this character. When the sentence proceeds with the words, "or in any other place or district of country, under the sole and exclusive jurisdiction of the United States," the construction seems irresistible, that, by the words "other place," was intended another place of a similar character with those previously enumerated, *and with that which follows.*

It is apparently here recognized that the meaning of the words "other place" is not limited alone by the words "fort, arsenal, dockyard and magazine," which precede them, but by the words "any other place or district of country," which follow, and that it is competent for the State legislature to cede exclusive jurisdiction to the United States over any place on which a needful public building is to be erected, so long as the land shall be used for that purpose. The reason for both the constitutional and the statutory provisions seems to indicate that it was intended to give the words "other place or district of country" and "other needful buildings" their broad, literal meaning.

> The indispensable necessity of complete authority at the seat of government carries its own evidence with it. * * * The necessity of like authority over forts, magazines,

> etc., is not less evident. *The public money expended on such places, and the public property deposited in them require that they should be exempt from the authority of the particular state.* (The Federalist, No. 43.)

The necessity for the rule here laid down by Madison is as clear in the case of a post-office or custom-house or subtreasury, on which public money has been expended and in which public property is deposited, as in the case of a fort or arsenal.

Chancellor Kent in his Commentaries (vol. 1, p. 429) says:

> The State governments may likewise lose all jurisdiction over places purchased by Congress, by the consent of the legislature of the State, for the erection of forts, dockyards, *light-houses, hospitals, military academies, and other needful buildings.* * * * The courts of the United States have sole and exclusive jurisdiction over an offense committed within a ceded place, notwithstanding the ordinary reservation of the right to execute civil or criminal process of the State. That was no reservation of any sovereignty or jurisdiction.

In the opinion of this eminent writer it is evident that the "needful buildings" referred to in the Constitution are not limited to those specifically enumerated in that instrument and in the statute.

In *Cohens* v. *Virginia* (6 Wheat., 428), Chief Justice Marshall said:

> The solution, and the only solution of the difficulty, is, that the power vested in Congress,

> as the legislature of the United States, to legislate exclusively *within any place ceded by a State*, carries with it, as an incident, the right to make that power effectual.

While the point at issue in this case was not involved in the opinion of Attorney-General Bates on the New York post-office site (10 Op. A. G., 34), it seems there to have been clearly recognized that the consent of the New York legislature to the acquisition of the post-office site worked a cession of jurisdiction to the United States.

The Congress and the legislatures of various States have also acted on the same supposition.

In the act of March 2, 1795 (1 Stat., 426), Congress provided that where any State had made or should make a cession of jurisdiction of places for the erection of *light-houses, buoys, beacons, or public piers* all process issuing under the authority of the State might be executed within the ceded territory as if no such cession had been made.

In joint resolution No. 6, Twenty-seventh Congress (5 Stat., 468), it was provided that it shall be the duty of the Attorney-General to examine the title of "all lands or sites which have been purchased by the United States for the purpose of erecting thereon armories, arsenals, forts, fortifications, navy-yards, *custom-houses, light-houses, or other public buildings of any kind whatever*, and that no public money shall be expended for such site until a written opinion in favor of the validity of such title, and also the consent of the legislature of the State in which the land or site

may be, shall be given to the said purchase." The resolution further provides that it shall be the duty of the Secretaries of the Executive Departments, respectively, under whose directions such land may have been purchased and over which the United States do not possess jurisdiction, *to apply to the legislatures of the States in which the lands are situated for a cession of jurisdiction.*

It is indisputable that Congress never assumed that their constitutional powers were limited in the manner claimed by the plaintiff in error. The legislatures of different States have also proceeded on various occasions on the same theory. For example, an act of Georgia of 1819, ceding lands to the United States for the erection of a light-house, provides, "and the jurisdiction thereof is hereby ceded to the United States." Chapter 54, Laws of New York, 1903, ceding land for the erection of a public building in Kingston, N. Y., provides: "The jurisdiction of the State of New York in and over said lands is hereby ceded to the United States, subject to the restrictions hereinafter mentioned." The State merely reserved the right to execute criminal and civil process issued under its laws on such lands. An identical provision is found in section 8374, Missouri Annotated Statutes, ceding to the United States lands for a public building at Hannibal, Mo.

We find, then, that the whole reason of the rule requires that the United States should be enabled to acquire exclusive jurisdiction over land ceded for

necessary public buildings of any character whatever, and that, so far as we can gather, text writers, courts, and legislatures, both Federal and State, have uniformly and invariably assumed that this power existed. Certainly the legislature of Georgia believed that it was granting full and exclusive jurisdiction in this case.

II.

It is assigned as error that the indictment does not charge that the crime was committed with premeditation in order to make it murder.

On this point it is only necessary to quote the language of the indictment itself, which charges that the defendant "did then and there, wilfully, unlawfully, deliberately, feloniously, and of his *malice aforethought*, with a certain iron bolt, * * * make an assault upon," etc.

III.

The objection that the indictment does not set out the act of Georgia, ceding jurisdiction, is without merit.

> The law of any State of the Union, whether depending upon statutes or upon judicial opinions, is a matter of which the courts of the United States are bound to take judicial notice, without plea or proof. (Gray, J., in *Lamar* v. *Micou*, 114 U. S., 223.)
>
> See also *Owings* v. *Hull*, 9 Pet., 606, 625.

IV.

Neither is the failure to allege title material. The indictment alleges that the United States had exclusive jurisdiction of the place on which it is charged the crime was committed. Nothing more is necessary. It is not the title of the United States that gives it jurisdiction, but the cession made by the act of the legislature.

V.

The plaintiff in error further assigns as error the ruling of the court excluding evidence of the general character of the defendant and limiting him to proof as to those features of character which were in issue in the particular case. In *People* v. *Fair* (43 Cal., 148) the court said:

> Mr. Phillips, in his work on evidence, expresses the true rule upon this subject, and which will be found to accord with the current of judicial decisions, and the opinions of the text writers upon the law. He says: "On a charge of stealing it would be irrelevant and absurd to inquire into the prisoner's loyalty or humanity; on a charge of high treason it would be equally absurd to inquire into his honesty and punctuality in private dealings. Such evidence relates to principles of moral conduct, which, however they might operate on other occasions, would not be likely to operate on that which is alone the subject of inquiry. It would not afford the least presumption that the prisoner might not have been tempted to commit the crime for which

> he is tried, and is, therefore, totally inapplicable to the point in question." (Page 490.) It is apparent that if such an inquiry must, upon objection by the prosecution, have been excluded for mere irrelevancy, had the prisoner sought to introduce it in her own behalf, the same rule should have rejected it when tendered by the prosecution itself.

See also:

> *State* v. *King*, 78 Missouri, 555.
> *State* v. *Bloom*, 68 Ind., 54.
> *People* v. *Garbutt*, 17 Mich., 9, 16.
> Wigmore on Evidence, sec. 59.
> Greenleaf on Evidence, vol. 3, sec. 25.

VI.

The ruling that the construction of deeds and other instruments in writing was for the court and not for the jury, to which the defendant excepted, is unquestionably correct.

> Upon the evidence in this case, the question * * * did not depend in any degree on oral testimony or extrinsic facts, *but wholly upon the construction of the correspondence in writing between the parties, presenting a pure question of law, to be decided by the court.* (*Hamilton* v. *Liverpool, etc.*, Ins. Co. 136 U. S., 255.) Starkie on Evidence, 10 Edition, p. 785.

VII.

The assignment as error of the ruling of the judge that "when a building on a lot or place of which the

United States has title, for which building an appropriation of the money of the United States has been made by act of Congress in a particular locality of the United States, by such act of appropriation it is declared by law and determined to be a needful public building," is clearly untenable. The question as to whether the building was a necessary one is manifestly one for the political departments of the Government.

VIII.

The plaintiff in error further urges that the evidence did not justify the jury in finding the defendant guilty of more than manslaughter.

The facts show, as has been hereinbefore stated, that there had been trouble between the deceased and the defendant earlier in the day on which the occurrences set forth in the indictment took place; that the defendant had used language indicating hostility to the deceased and a desire to do him bodily harm; that he had pushed him with a hoe when he was on a narrow plank, a fall from which meant certain death, and that he further struck him twice on the head with an iron bolt, an instrument likely to cause death, when he was in no danger of being injured himself. All these facts clearly show the existence of an "abandoned and malignant heart," which, in the language of the law, must be shown on an indictment for murder.

IX.

It is further assigned as error that the judge erred in charging that aggravating words are in themselves insufficient to justify a killing.

> It is well settled by the authorities that mere words, however aggravating, are not sufficient to reduce the crime from murder to manslaughter. (*Allen* v. *United States*, 164 U. S., 492, 497.)
>
> *United States* v. *Outerbridge*, Fed. Cas. 15,978.

X.

The judge further charged that if Battle unjustifiably assaulted Berry with a hoe handle as the latter was suspended by a rope in the air and that if Berry then made up the rope toward him with a view of attaining a place of safety, or to resent the assault, and if it further appeared that Battle had all the advantage because of the relative position of the parties he, having thus unlawfully brought on the conflict, would not be justified in using a deadly weapon and in taking the life of his assailant. The correctness of this ruling is beyond all doubt. Nothing is better settled than that a person who is assaulted or in danger of being assaulted must retreat as far as he safely can before turning on his adversary.

> The party assaulted must therefore flee as far as he conveniently can, either by reason of some wall, ditch, or other impediment; or as far as the fierceness of the assault will permit him. (4 Blackstone's Commentaries, 185.)

See also:

Mitchell v. *State*, 22 Ga., 211.
Finch v. *State*, 81 Ala., 41.

XI.

The plaintiff in error further asked the court to charge the jury as follows:

> Gentlemen of the jury, if you believe in this case that the defendant got into an altercation with the deceased on top of the Government building in the city of Macon, and they became engaged in a fight, and during that fight the deceased, Berry, lost his footing and fell 59 feet to the ground, breaking his neck, and that defendant tried to catch him in falling, and that he had no intention to kill and murder deceased, then, gentlemen, I charge you you would be authorized to find defendant only guilty of involuntary manslaughter in the commission of a lawful act.

It was not error to refuse this charge. The language was ambiguous and likely to mislead the jury. The circumstances leading up to the altercation, and the question whether even if they became engaged in a fight it was necessary for the defendant to adopt the measures he did to protect himself were all material. The charge asked for entirely omitted them from consideration.

XII.

There was no evidence in the case tending to show that the defendant was mentally incapable of distin-

guishing between right and wrong, and the charge asked for by the defendant, which is set out in the twenty-first assignment of error, could only tend to confuse the issue in the minds of the jury and was properly refused. In any event, it is clear the defendant suffered no prejudicial error thereby.

XIII.

The alleged error in refusing to charge the jury the law of justifiable homicide is plainly without foundation. The court, as will be seen by the charge, explained at great length the evidence which was necessary to prove murder or manslaughter and further charged the jury that unless it was satisfied beyond a reasonable doubt that all the elements of one crime or the other were present there could be no conviction. This was undoubtedly sufficient.

XIV.

The last point to which the Government desires to call attention is the alleged error of the court in interrupting counsel for the defendant in his concluding argument and stating to counsel in the hearing of the jury that the argument he was making was degrading to the administration of justice. On this point the Government deems it necessary only to call attention to what actually took place, as is shown by the record:

> Mr. COOPER (to the jury). You will believe a white man not on his oath before you will a negro who is sworn. You can swallow those

niggers (referring to certain colored witnesses) if you want to, but John Randolph Cooper will never swallow them. (Mr. Cooper several times alluded to the Government's colored witnesses by the term of "nigger" and "coon," and upon the last occasion of the use of the latter term was interrupted by the court as follows):

Judge SPEER. Mr. Cooper, we are not accustomed to hearing such a continual refrain of "nigger, nigger, nigger" in this court, and I would greatly prefer if you would discuss these witnesses under the rules of evidence, without attempting to raise a race prejudice here. It is bad enough anyway.

* * * * *

Judge SPEER. Discuss their evidence, that is proper, they are sworn witnesses, and you are a sworn lawyer. You owe a duty to the court and to the country, and you owe the duty of making an argument that is not calculated to place the issues upon the lowest basis. * * *

Mr. COOPER. I do not know how to discuss this case without calling these men their names. I have no intention of hurting their feelings, and if I say anything in the heat of argument, I hope your honor will not send me to the Bibb County jail.

Judge SPEER. I am not threatening you with either fine or imprisonment, Mr. Cooper. I am simply asking you to make an argument which does not tend to degrade the administration of justice.

The impropriety of the language used by counsel is too plain to call for any comment.

CONCLUSION.

Upon a review of the whole record, it is apparent that the Circuit Court for the Southern District of Georgia properly took jurisdiction of the case and that no prejudicial error has been committed.

The judgment of conviction should, therefore, be affirmed.

ALFORD W. COOLEY,
Assistant Attorney-General.

JANUARY, 1908.

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